IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 824 OF 2000

Jagbirsingh Darbarsingh Jath
aged 29 years, presently lodged at
Circle 2/2,
Yerwada Central Prison,
Pune 6 ...Appellant
(Ori. accused)

Versus

The State of Maharashtra
R.C.F. Police Station
(C.R. No. 267 of 1996) ...Respondent

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Smt Sonia Bankapur-Miskin, advocate-appointed for the Appellant

Shri. A.M. Shringarpure, A.P.P. for Respondent.

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CORAM: N. V. DABHOLKAR AND
SMT. V.K. TAHILRAMANI, JJ.

DATED: 16TH JANUARY, 2006

ORAL JUDGMENT (PER SMT TAHILRAMANI, J.):-

1. Through this appeal, the appellant i.e. original accused challenges the judgment and order dated 5.7.2000 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No. 464 of 1997. By the said judgment and order, the learned

Sessions Judge convicted the appellant-accused under Section 302 of I.P.C. and sentenced him to R.I. for life.

2. The prosecution case briefly stated is as under:-

. The appellant-accused was a CISF (Central Industrial Security Force) constable. At the relevant time he was posted at Hindustan Petroleum Corporation Ltd. (HPCL Unit) at Chembur. The deceased Shri. R. Sharma was an Inspector in CISF and he was also posted at HPCL Unit at Chembur at the relevant time. The incident in the present case occurred on 22.12.1996 at about 10.05 p.m. Shri. R. Sharma had just arrived and was sitting in the control room cabin. At that time, the complainant P.W.1 Chandan Mukharjee who was a CISF Dog Master was also on duty. At about 10.05 p.m., the accused entered into the cabin where Inspector R. Sharma was sitting in the cabin and the appellant had fired a shot on Inspector Sharma with SLR Rifle which has been allotted to him. Inspector Sharma was injured. This was seen by P.W.3 Lallansingh who was police Hawaldar in the service of CISF and who was also posted at the HPCL Unit at Chembur. The incident was

seen by Mr. Lallansingh through glass window of control cabin. Immediately, thereafter, the police were informed. Inspector Sharma was taken to the hospital where he was declared to be dead. F.I.R. came to be lodged on the report given by P.W.1 Chandan Mukharjee. Thereafter, investigation commenced. Body of Inspector Sharma was sent for post mortem. Fire arm injury was found on Inspector Sharma. The cause of death was fire arm injury involving brain. After completion of investigation, charge sheet came to be filed. In due course, case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Section 302 of I.P.C.. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. His further defence is that on the relevant day he was not on duty. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted the appellant-accused, as stated in para 1 above. Hence, this Appeal.

4. We have heard Smt. Miskin, learned advocate for the appellant and Mr. Shringarpure, learned A.P.P.

for State. We have also perused the evidence and the judgment and order passed by the learned Sessions Judge. After carefully considering the matter, we are of the opinion that this appeal deserves to be dismissed.

5. The conviction of the appellant is based on direct evidence and circumstantial evidence. The direct evidence in this case has been furnished by P.W.3 Lallansingh. Lallansingh was working as police Hawaldar in the service of CISF. At the relevant time, he was posted at HPCL Unit at Chembur. On 22.12.1996, his duty hours were from 18.00 hrs to 6.00 hrs of 23.12.96. This witness has stated that at about 10.00 p.m. on 22.12.96, Inspector R.R. Sharma came and sat in the control room and at that time the appellant was on patrolling duty from HPCL gate to Video plant area. At about 10.05 p.m., the appellant came in from HPCL gate and entered the control cabin. Within few seconds he fired from his SLR (Self Loading Rifle) at Inspector Sharma. Thereafter, the appellant came out of the cabin holding his rifle in firing position. P.W.3 Lallansingh was at a distance of 20 to 25 feet from control room when this incident took place. He could

see the incident from the glass of the window of the control cabin. The area of the window is about 4 to 5 feet. It has come on record that the cabin had glass windows on three sides. This is stated by P.W.4 Shivaji Kadam. Immediately after the appellant came out of the cabin, he ran away by taking lift in a tanker. Nothing has been elicited in the cross examination of this witness so as to disbelieve his testimony in his examination in chief. Hence, we have no hesitation in relying on the evidence of this witness.

6. The evidence of P.W.3 Lallansingh is corroborated to some extent by the evidence of P.W.1 Chandan Mukharjee, P.W.4 Shivaji Kadam and P.W.6 Balasaheb Mane. P.W.1 Chandan was Dog Master in the employment of CISF. On the relevant day he was on duty at HPCL. This witness has stated that at about 22.05 hrs. Inspector Sharma was sitting in the control room. Inspector Sharma called this witness and asked him to call driver Gurbagsingh. This witness found that Gurbagsingh was sleeping, hence, he came back to inform Inspector Sharma to that effect. At that time, he heard noise of firing from rifle. When Chandan reached the control room, he found that the

appellant was leaving the control room with a rifle, the appellant was holding a rifle in his hand in firing position while coming out of the control room. On seeing this, this witness informed the police about this fact on telephone. Thereafter, Chandan Mukharjee came back to the control room and found that Inspector Sharma had collapsed on his chair with a bullet injury from his nose through his right ear. Blood was found on the clothes of Inspector Sharma, on floor of the cabin and on the glass. Inspector Sharma was found dead.

7. P.W.4 Shivaji was employed with CISF. He was posted at HPCL Chembur on 22.12.96. He was on duty from 18.00 hrs on 22.12.96 to 6.00 hrs. on 23.12.96. This witness has stated that on 22.12.96 at about 10.00 p.m., Inspector Sharma came for his night duty. Inspector Sharma took his seat in the cabin. At that time, the appellant and P.W.6 Balasaheb Mane were on patrolling duty. The appellant was armed with an SLR. This witness was posted at the gate of HPCL P.W.4 Shivaji states that he saw that the appellant opened the door of control cabin. This witness heard the noise of firing. He went running to the control room where he found that the appellant was standing

holding an SLR in a firing position. The appellant threatened Shivaji by showing him the SLR. The appellant while still holding the SLR in the same position, made his way to the gate for vehicles. There he took a lift in a tanker and went away.

8. P.W.6 Balasaheb Mane was employed with CISF. He was also posted at HPCL, Chembur on 22.12.96. He was on patrolling duty from HPCL gate to Video plant. His duty was from 6.00 p.m. to 12.00 p.m. This witness has stated that the appellant was with him for the same duty on that day. P.W.6 Balasaheb has further stated that at about 10.00 p.m. the appellant came near the main gate. The appellant told this witness that he wanted to see Inspector Sharma. Balasaheb waited outside the gate. The appellant went in the cabin. Thereafter, this witness heard noise of firing. This witness tried to find out the place from where he heard the noise. At that time, he found that the appellant was coming out of the gate with SLR in firing position. The appellant went on the road and took a lift in a tanker and went away. When this witness went inside the main gate he found that people had gathered at the control cabin. He could see from the glass of

the control cabin that Inspector Sharma was bleeding.

9. The evidence of eye witness P.W.3 Lallansingh is corroborated to a certain extent by the evidence of P.W.1 Chandan Mukharjee, P.W.4 Shivaji kadam and P.W.6 Balasaheb Mane. All these witnesses have heard the noise of firing. They have seen the appellant coming out of cabin holding the rifle in his hand in firing position immediately after Inspector R.R. Sharma had been shot dead. All these three witnesses have not been shaken in their cross examination and we find their evidence to be reliable and trustworthy.

10. P.W.1 Chandan Mukharjee, P.W.3 Lallan Singh, P.W.4 Shivaji Kadam and P.W.6 Balasaheb Mane have stated that the appellant was on duty at the relevant time. Besides this, the prosecution has examined P.W.7 Kadithi Apparao. P.W.7 Kadithi was head constable in CISF. This witness has stated that he had allotted duty to two persons namely Mr. Mane (P.W.6) and the appellant in the area between the main gate to Video plant. Thus, this witness also corroborates that the appellant was on duty on that day. This witness has further stated that at the

time of allotting duty to Mr.Mane and the appellant, the appellant was given an SLR. P.W.7 Kadithi Apparao has further stated that he was informed by constable P.W.4 Kadam that Inspector Sharma was shot dead and the appellant had gone to Vashi by taking a lift in a tanker.

11. The prosecution has also examined P.W.5 Bhim Sen Vashishth, he was Assistant Commandant attached to HPCL Unit of CISF. This witness has stated that on 22.12.96, a SLR was allotted to the appellant. This witness has further stated that the said SLR bearing No.15311367 was received from the stores. The said SLR was given to the appellant with magazine specification No. 1005-001739, OFT-91. The said SLR was seized by the police at Vashi from the appellant. This is the very same SLR which has been seized in the present case from the appellant. The appellant had fired from the said SLR at Inspector Sharma and thereafter, also he had fired from the same SLR at Vashi for which a separate C.R. has been registered under Section 307 IPC. This witness has identified the SLR i.e. Self Loading Rifle (Article 3) which was used for firing at Inspector Sharma and which was seized from the appellant in the present case. The

SLR which was seized from the appellant was sent to the Ballistic Expert. Besides the SLR the bullet which had been fired at Inspector Sharma as well as empty was also sent to the Ballistic Expert. The report of the Ballistic Expert Exhibit 31 (Colly.) states that the empty found near the spot and the bullet which had been fired at Inspector Sharma have been fired from the very same rifle i.e. Article 3. Thus, the empty and bullet were fired from the same weapon i.e. the weapon which was seized from the appellant. Thus, the ballistic report also goes against the appellant.

12. The medical evidence is also consistent with the prosecution case. P.W.8 Dr. Ashok Shinde conducted post mortem on the body of R.R. Sharma. Dr. Ashok Shinde, noticed the following injuries;-

a. Fire arm wound of entry on the right side nose (on face), 1.0 cm below bridge of nose, 2.2 cm. from tip of nostril, star shaped, 1.4 cm x 1.3 cm., inverted margins, No tattooing/singing of hair, dried blood/clots within.

b. Fire arm wound of exit on the right side head laterally, 1.6 cm behind right angle of mandible, right external ear absent, 8.0 cm x 7.0 cm with lacerated haemorrhage brain matter protruding out, margins averted.

. Dr. Shinde has stated that the fire arm has been used from a very close contact, in as much as the weapon must have been kept and then fired. According to Dr. Shinde, all the injuries were ante mortem and the cause of death was due to injuries involving brain.

. Dr. Shinde has specifically stated that the fire arm injury was sufficient in the ordinary course of nature to cause death instantaneously.

13. In the present case, there is direct evidence of P.W.3 as well as circumstantial evidence which has been furnished by P.W.1 Chandan Mukherjee, P.W.4 Shivaji Kadam, P.W.5 Bhim Sen Vashishth and P.W.6 Balasaheb Mane as well as by the report of ballistic expert. The evidence on record clearly points out to

the complicity of the appellant in the present case. Thus, we have no hesitation in coming to the conclusion that it was the appellant only who had fired at Inspector Sharma.

14. In the result, we confirm the conviction and the sentence imposed upon the appellant-accused for the offence under Section 302 and dismiss the appeal. The appellant is in jail, he shall serve out his sentence.

15. Advocate Smt. Sonia Miskin was appointed as amicus curie for prosecuting the appeal on behalf of the appellant. We found her to be very well prepared and she has very ably conducted this appeal. We quantify her professional charges at Rs.2500/-.

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